

Bretton C. Gerard
10440 N. Central Expressway, Suite 800
Dallas, Texas 75231
214-540-6514 – Telephone
214-540-6663 – Facsimile

Attorney for Yogesh Govindji

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

LS MOTORCARS, LLC

DEBTOR

§
§
§
§
§

CASE NO. 21-40441-btr

CHAPTER 11

**MOTION FOR RELIEF FROM AUTOMATIC STAY
TO PURSUE CLAIMS AGAINST NON-DEBTORS IN STATE COURT**

14-DAY NEGATIVE NOTICE – LBR 4001(a):

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading **WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE** shown in the certificate of service unless the Court shortens or extends the time for filing such objection. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the Court may enter an order granting the relief sought. If an objection is filed and served in a timely manner, the Court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The Court reserves the right to set a hearing on any matter.

TO THE HONORABLE BRENDA T. RHOADES, U.S. BANKRUPTCY JUDGE:

Yogesh Govindji, a creditor, and party-in-interest herein (“Movant”), files this Motion for Relief from Automatic Stay so that he may enforce his state law rights and remedies, including his claims against Robert C. Morales, and in support of this Motion would respectfully show the Court the following:

I. JURISDICTION

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1334 and 11 U.S.C. §§105 and 362.

2. This is a core proceeding under 28 U.S.C. §157(b)(2)(G).

II. FACTS

3. **Bankruptcy Case** – This case was filed on March 26, 2021, as a proceeding under Chapter 11.

4. Movant Yogesh Govindji is the Plaintiff in a lawsuit styled *Yogesh Govindji vs. Robert C. Morales and LS Motorcars LLC*, Cause No. DC-19-18080 in the 160th Judicial District Court of Dallas County, Texas (the “State Court Action”).

5. In the State Court Action, in November 2019, Movant sued Robert C. Morales (“Morales”). Morales denied that he was personally liable for the debt and claimed that LS Motorcars LLC was instead liable. As a result, Movant sought leave of Court to add LS Motorcars LLC as a party to the State Court Action.

6. Leave of court was granted in the State Court Action and Movant amended his pleadings to alternatively state claims against LS Motorcars LLC. A true and correct copy of Movant’s Third Amended Original Petition that was filed in the State Court Action on January 21, 2021 is attached to this Motion as **Exhibit “A”**.

7. The Debtor in this Chapter 11 bankruptcy is LS Motorcars LLC. Morales is not a party to this bankruptcy proceeding. At the time that the Debtor filed this Chapter 11 bankruptcy case, Movant’s claims against Morales had not yet been adjudicated in the State Court Action.

8. In an abundance of caution, given the pending bankruptcy case, and given the relationship between Morales and the Debtor, Movant seeks relief from the Automatic Stay so that he may enforce his state court law rights and remedies.

III. RELIEF FROM THE AUTOMATIC STAY

9. Cause exists for termination of the automatic stay as Movant does not seek to adjudicate the claims involving Debtor. Movant only seeks to move forward with his claims against Morales and seeks termination of the stay to avoid a violation of same.

10. In a diligent attempt to avoid the expense associated with the filing of this Motion, Movant's counsel attempted to resolve this dispute with Debtor's counsel through written correspondence. Those efforts were unsuccessful. A true and correct copy of the e-mail exchange between counsel is attached to this Motion as **Exhibit "B"**.

11. The automatic stay under §362 does not ordinarily apply to actions against a non-debtor. *See In re TXNB Internal Case*, 483 F.3d 292, 301 (5th Cir. 2007).

12. Further, the party invoking the stay has the burden to show that it is applicable. *See* 2 WILLIAM L. NORTON, JR., NORTON BANKRUPTCY LAW AND PRACTICE § 43:4 (3d ed. Supp. 2010) (noting that in bankruptcy court proceedings, "the party seeking to extend the stay will bear the burden to show that 'unusual circumstances' exist warranting such an extension of the stay to a non-debtor"); *see also Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001) (holding that the defendant had "no interest to establish such an identity [of interests] with [the] debtor").

13. Movant requests that the Court issue an Order granting this Motion for Relief from Automatic Stay for cause. Movant requests that the Court make the Order effective immediately upon entry, waive Rule 4001(a)(3), and order that enforcement of such Order will not be stayed for any period after its entry.

WHEREFORE, Movant Yogesh Govindji prays that this Court enter an Order granting him relief from the automatic stay as requested above.

Respectfully submitted

/s/ BRETTON C. GERARD

Bretton C. Gerard

State Bar No. 07813050

10440 N. Central Expressway, Suite 800

Dallas, Texas 75231

Telephone: (214) 540-6514

Facsimile: (214) 540-6663

bret@brettongerardlaw.com

Attorney for Yogesh Govindji

CERTIFICATE OF SERVICE

This is to certify that on April 16, 2021, a true and correct copy of this pleading was served via the ECF system or by U.S. first class mail, postage prepaid, to the parties on the attached service list or via CM/ECF to all parties authorized to receive electronic notice in this case.

/S/ BRETTON C. GERARD

Bretton C. Gerard

Label Matrix for local noticing 0540-4 Case 21-40441 Eastern District of Texas Sherman Fri Apr 16 13:30:32 CDT 2021	Christopher V. Arisco Padfield & Stout, LLP 420 Throckmorton Street, Suite 1210 Fort Worth, TX 76102-3792	Arivo Acceptance LLC c/o David Pinkston 10 Exchange Place Eleventh Floor Salt Lake City, UT 84111-2714
Arivo Acceptance LLC s/o David Pinkston 10 Exchange Place Eleventh Floor Salt Lake City, UT 84111-2714	Sharon Marie Beausoleil Foley & Lardner LLP 1000 Louisiana Suite 2000 Houston, TX 77002-5018	Carfax c/o Barnett & Garcia 3821 Jupiter Trade Suite 108 Austin, TX 78738
Katharine Clark (SBRA V) Thompson Coburn LLP 2100 Ross Avenue Ste 600 Dallas, TX 75201-6701	Dallas County Linebarger Goggan Blair & Sampson, LLP c/o Laurie A. Spindler 2777 N. Stemmons Frwy Suite 1000 Dallas, TX 75207-2328	Dallas County Linebarger Goggan Blair & Sampson, LLP c/o Laurie A. Spindler 2777 N. Stemmons Freeway Suite 1000 Dallas, TX 75207-2328
Dallas County Tax Assessor 1202 Elm Street Suite 2600 Dallas, TX 75270	Patrick Gillean c/o Mike Bowers 2323 Ross Ave Suite 1900 Dallas, TX 75201-2721	Patrick T. Gillean c/o Bell Nunnally & Martin LLP 2323 Ross Avenue Suite 1900 Dallas, TX 75201-2721
Yogesh Govindji c/o Bretton Gerard 10440 N Central Expressway Suite 800 Dallas, TX 75231-2264	Riyad Hammad c/o Marwa Elbially 704 E 15th Street Suite 204 Plano, TX 75074-5712	Jacques Robert c/o Sharon Campbell 3500 Oak Lawn Suite 110 Dallas, TX 75219-4373
Jorge Ramirez c/o David Davis 4144 N Central Expressway Suite 910 Dallas, TX 75204-2135	LS Motorcars, LLC 6221 Norwood Drive Frisco, TX 75034-5774	Eric A. Liepins Eric A. Liepins, P.C. 12770 Coit Road Suite 850 Dallas, TX 75251-1364
Michael P Menton SettlePou 3333 Lee Parkway, Eighth Floor Dallas, TX 75219-5111	Russell W. Mills Bell Nunnally & Martin 2323 Ross Ave. Suite 1900 Dallas, TX 75201-2721	NextGear Capital, Inc. c/o Padfield & Stout, LLP Christopher V. Arisco 420 Throckmorton Street, Suite 1210 Fort Worth, TX 76102-3792
NextGear Capital, Inc. 11799 North College Avenue Carmel, IN 46032-5605	NextWave Funding 5757 Blue Lagoon Drive Suite 170 Miami, FL 33126-2076	Alan Bartlett Padfield Padfield & Stout, L.L.P. 420 Throckmorton Street, Suite 1210 Ft. Worth, TX 76102-3792
PrimaLend Capital Partners 10300 North Central Expressway Suite 410 Dallas, TX 75231	Marcus Salitore US Trustee Office 110 N. College Ave., Room 300 Tyler, TX 75702-7231	Small Business Administration 14925 Kingsport Road Fort Worth, TX 76155-2243
Laurie A. Spindler Linebarger, Goggan, Blair & Sampson 2777 N. Stemmons Frwy Ste 1000 Dallas, TX 75207-2328	Texas Security Bank 3212 Beltline Road Dallas, TX 75234-2345	Texas Security Bank c/o Michael P. Menton 3333 Lee Parkway, Eighth Floor Dallas, TX 75219-5111

Texas Workforce Commission
101 East 15th Street Room 556
Austin, tx 78778-0001

Texas Workforce Commission
101 E 15th Street
Austin, TX 78778-0001

U.S. Attorney General
Department of Justice
Main Justice Building
10th & Constitution Ave., NW
Washington, DC 20530-0001

US Trustee
Office of the U.S. Trustee
110 N. College Ave.
Suite 300
Tyler, TX 75702-7231

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Carfax
c/o Barnett & Garcia
3821 Jupiter Trade
Suite 108
Austin, TX 78738

(u)Good Floor Loans LLC

(d)NextWave Funding
5757 Blue Lagoon Drive
Suite 170
Miami, FL 33126-2076

(d)Patrick Gillean
c/o Mike Bowers
2323 Ross Ave
Suite 1900
Dallas, TX 75201-2721

(d)Jorge Ramirez
c/o David Davis
4144 N Central Expressway
Suite 910
Dallas, TX 75204-2135

(d)Riyad Hammad
c/o Marwa Elbially
704 E 15th Street
Suite 204
Plano, TX 75074-5712

(d)Jacques Robert
c/o Sharon Campbell
3500 Oak Lawn
Suite 110
Dallas, TX 75219-4373

(d)Texas Security Bank
3212 Beltline Road
Dallas, TX 75234-2345

(d)Yogesh Govindji
c/o Bretton Gerard
10440 N Central Expressway
Suite 800
Dallas, TX 75231-2264

End of Label Matrix
Mailable recipients 33
Bypassed recipients 9
Total 42